



CRP No.1388 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :01.07.2025

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

C.R.P.No.1388 of 2025 and CMP No.8248 of 2025

1.Palaniammal @ Anjalagam
2.Boopathiraja

... Petitioners

VS

1.Hariprasad
2.Annadurai
3.Mani
4.Siva
5.Varadappan

.. Respondents

Revisions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.12.2024 passed in I.A.No.11 of 2024 in O.S.No.11 of 2023 on the file of District Munsif Court, Namakkal.

For Petitioners : Mr.K.S.Jeyaganeshan

For Respondents : Mr.T.N.Thirumalaisamy
For R.1
R.2 to R.5 – no appearance

ORDER

Application in I.A.No.11 of 2024 has been taken out by the defendants 4 and 5 for appointment of an Advocate Commissioner, to be assisted by Taluk Surveyor to re-inspect the subject property and file a Report.

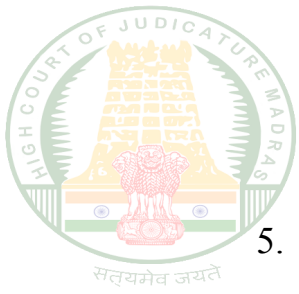


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WEB COPY 2. It is an admitted case of the parties that earlier, an Advocate Commissioner was appointed and he has taken the assistance of a private Surveyor and the Commissioner's Report along with the Survey Plan has also been filed before the Court. The revision petitioners have also filed their objections to the said Report filed by the Advocate Commissioner enclosing a copy of the Surveyor Report.

3. Now, the contention of the petitioners in I.A.No.11 of 2024 is that the Highways Department has acquired a portion of the property and therefore, the Government Surveyor would be the competent person to assist the Advocate Commissioner and the earlier Report would be of no assistance to the trial Court. Therefore, the appointment of second Advocate Commissioner to re-visit the property, taking the assistance of the Government Surveyor, and a fresh Report has been sought for.

4. The said application was resisted by the plaintiff. The trial Court has proceeded to dismiss the application on enquiry. Aggrieved by the same, the defendants 4 and 5 are before this Court by way of revision.



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5. Heard Mr.K.S.Jeyaganeshan, learned counsel for the petitioners and

Mr.T.N.Thirumalaisamy, learned counsel for the first respondent.

6. Learned counsel for the petitioners would submit that the earlier Advocate Commissioner failed to note the fact that the property has been acquired by Highways and there is also marking made delineating the margin of the property which is sought to be acquired. He would also state that the Private Surveyor was not competent to go into the issues of acquisition which involves consideration of survey numbers and revenue records which are available only with the Taluk Surveyor and not the private Surveyor. Therefore, learned counsel states that no prejudice would be caused if a new Advocate Commissioner is appointed or alternatively the same Advocate Commissioner is appointed to take the assistance of Taluk Surveyor and file a fresh Report.

7. Per contra, learned counsel for the first respondent/plaintiff would submit that even the earlier inspection was done only in the presence of Village Administrative Officer and in this regard, he had taken me through the Advocate Commissioner's Report in I.A.No.3 of 2023, where there is a mention by the Advocate Commissioner that inspection was carried out with the assistance of Surveyor and also the Village Administrative Officer.



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WEB COP 8. On going through the objection that has been filed to the said Commissioner's Report by the revision petitioners, I do not find any objection that the Village Administrative Officer was not present. Secondly, there is also no objection that the Private Surveyor was not competent to give his opinion on the facts of the case, since it is involved land acquisition matter. I find that the entire objections relate to acts of omission that have been committed by the Commissioner and the Surveyor and the competence of the Private Surveyor has not been challenged.

9. In the light of the above, I do not find that the order of the trial Court, dismissing the application seeking appointment of another Advocate Commissioner to be perverse. It is made clear that in the event of the trial Court requiring the assistance of an expert especially the Government Surveyor after the parties lead evidence, it shall be open to the trial Court to seek for a Report by appointing an Advocate Commissioner or re-issuing the warrant to the Advocate Commissioner who has already visited the property.

10. At this juncture, the exercise is wholly unnecessary. It is open to the revision petitioners to seek for cross examination of the Advocate



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Commissioner as well as the Surveyor, who have already filed their report,

WEB CON during the course of trial.

11. I find that the application was dismissed with a cost of Rs.5,000/-.

The trial Court has not given any special reasons for imposing costs. Therefore, I am unable to sustain the findings of the trial Court imposing cost of Rs.5,000/- on the revision petitioners.

12. In the result, the Civil Revision Petition is partly allowed, confirming the order passed by District Munsif Court, Namakkal, dismissing I.A.No.11 of 2024 in O.S.No.11 of 2023 and setting aside the cost of Rs.5,000/- imposed on the petitioners/defendants 4 and 5.

No costs. Consequently, connected miscellaneous petition is closed.

01.07.2025

Index: Yes/No
Website:yes/no
Speaking Order/Non-speaking Order
SR

P.B.BALAJI.,J.

SR



WEB COPY

The District Munsif Court, Namakkal



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